

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

| | | |
|------------------------------------|---|--------------------------------|
| STATE OF ARIZONA ex rel. |) | |
| WILLIAM G. MONTGOMERY, |) | Court of Appeals, |
| Maricopa County Attorney, |) | |
| |) | No. 1 CA-SA 15-0087 |
| Petitioner, |) | |
| |) | Maricopa County Superior Court |
| vs. |) | No. CR 2013-428563-001 |
| |) | |
| THE HONORABLE JOSE PADILLA, |) | |
| Judge of the SUPERIOR COURT OF THE |) | |
| STATE OF ARIZONA, in and for the |) | |
| County of MARICOPA, |) | |
| |) | |
| Respondent Judge, |) | |
| |) | |
| And |) | |
| |) | |
| CHRIS SIMCOX, aka |) | |
| CHRISTOPHER ALLEN SIMCOX |) | |
| |) | |
| Real Party in Interest. |) | |
| _____ |) | |

***AMICUS CURIAE* BRIEF OF
THE ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
IN SUPPORT OF PETITIONER, STATE OF ARIZONA**

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I. IDENTITY AND INTEREST OF *AMICUS CURIAE*.

The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") respectfully submits this *amicus curiae* brief on behalf of its members, in support of Petitioner, the State of Arizona.

APAAC is a state agency created by A.R.S. § 41-1830 *et seq.* APAAC is comprised of, *inter alia*, the elected county attorneys from Arizona's fifteen counties, in addition to the Arizona Attorney General, and several head city court prosecutors. APAAC's primary mission is to provide training, resources, and a variety of other services to the more than 800 state, county, and municipal prosecutors in Arizona. APAAC also serves as the liaison for prosecutors with the legislature and the courts, advocating for prosecutorial interests before the legislature or proposing changes to this Court's procedural rules.

In its capacity as a state agency, Rule 16(a), Ariz. R. Civ. App. P. specifically permits APAAC to file an *amicus curiae* brief without requiring either consent of the parties or leave of court. Based on its status as a state agency, this Court has accepted *amicus curiae* briefs from APAAC in other cases.

In its role as a prosecutorial educator, advocate, and resource, APAAC has a significant interest in the issue involved in this case.

II. ARGUMENT

A. Arizona's Constitution Protects Minor Sexual Assault Victims from Further Harm of Reliving Sexual Assault through Cross-Examination by Their Assailant.

“[T]he victim of a sexual assault is actually assaulted twice—once by the offender and once by the criminal justice system.” *State v. Sheline*, 955 S.W.2d 42, 44 (Tenn. 1997).

Recognizing the need to protect victims from further injury by the criminal justice system, Arizona's Constitution provides that victims of crime have the right “to be free from intimidation, harassment, or abuse throughout the criminal justice process.” Ariz. Const. art. II, § 2.1 (A)(1). Crime victims have standing in criminal cases to assert their constitutional rights. *State ex rel. Romley v. Superior Court In and For County Maricopa (Roper, Real Party in Interest)*, 172 Ariz. 232, 237, 836 P.3d 445, 450 (App. 1992); ARS §13-4437(A). The State may exercise those rights on behalf of a victim. ARS § 13-4437(C).

Child sexual abuse victims suffer from a myriad of physical and psychological afflictions. These afflictions include: sudden unexplained personality changes, mood swings, and insecurity; delayed or hindered emotional development; loss of self-confidence or self-esteem; social withdrawal; depression; headaches or stomachaches with no medical cause; desperate seeking of affection; and avoidance of certain situations, such as refusing to go to school or ride the bus.

See, e.g., The Mayo Clinic, Diseases and Conditions, Child Abuse, Symptoms, <http://www.mayoclinic.org/diseases-conditions/child-abuse/basics/symptoms/con-20033789> (last visited April 14, 2015); Parents Protect!, Child Sexual Abuse Warning Signs, http://www.parentsprotect.co.uk/warning_signs.htm (last visited April 14, 2015). Child sexual abuse can have a fundamental effect on brain functioning, as a child's brain becomes damaged by the abuse they suffer. Minzenberg, M. J., Poole, J. H. and Vinogradov, S., *A neurocognitive model of borderline personality disorder: Effects of childhood sexual abuse and relationship to adult social attachment disturbance*, 20 DEV. and Psychopathology, 20(1), 341-68 (2008), http://ucdirc.ucdavis.edu/people/papers/minzenberg_poole_vinogradov_DP2008.pdf.

The trauma a sexual assault victim suffers may be compounded by a personal confrontation or interaction with a defendant. *Roper* at 237, 836 P.3d at 450. Cross-examination by the defendant subjects a minor victim to re-victimization - forcing the child to relive the traumatic sexual assault through confrontation, questioning, and control *by the very person who sexually assaulted them*. This re-victimization is especially problematic when the minor victims are young children, seven and nine years of age, as is the case at bar.

These victims are already suffering from the abuse, as demonstrated by their behaviors: security fears, violently acting out, anxiety, and panic attacks. (State's

Appendix A.) As this Court recognized in *Roper, supra*, the psychological damage to these young children can be compounded if the Defendant personally confronts and controls them as he would during cross-examination.

Compelling these children victims to submit once again to the control of their assailant is a violation of their clearly defined Constitutional rights to be free from intimidation, harassment or abuse throughout the criminal justice process.

B. Cross-Examination of Child Sexual Abuse Victims by Their Assailant Hinders Accurate and Truthful Testimony.

Struggling to find the balance between protecting a defendant's right to confrontation and the victim's right to be free from harassment and intimidation in light of the need for truthful victim testimony was recognized and acknowledged by the United States Supreme Court. *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974).

Fear of the potential for re-traumatization may strike the victim in any number of ways and could lead to inaccurate testimony, or even a complete inability or unwillingness to testify. Some level of discomfort is to be expected when a victim of sexual assault must testify at trial, but where a defendant has direct access to his alleged victim it is not unreasonable to expect the victim's level of distress to become debilitating. Linda Mohammadian, Sexual Assault Victims v. Pro Se Defendants: Does Washington's Proposed Legislation Sufficiently Protect

Both Sides?, 22 Cornell J.L. & Pub. Pol'y 491, 514 (2012),
<http://www.lawschool.cornell.edu/research/JLPP/upload/Mohammadian-final.pdf>.

Therefore, the Respondent Judge's order subjecting the child victims to cross-examination by the Defendant heightens the risk of significantly hindering the thoroughness and accuracy of their trial testimony, and impinges on the rights of both parties.

II. CONCLUSION

APAAC respectfully urges this Court to accept review of the State's Special Action Petition and grant relief. The Respondent Judge's order permitting the Defendant to personally cross-examine the young sexual abuse victims violates their Constitutional right to be free from intimidation, harassment or abuse through the criminal justice process. In addition, the further trauma inflicted upon the victims by being subjected to cross-examination by the Defendant, may hinder the accuracy of their trial testimony, which could impede the right of the Defendant to a fair and full trial.

RESPECTFULLY SUBMITTED this 15th day of April, 2015.

By: /s/_____
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